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LITIGATION

# *handbook*

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**C**HOOSING THE RIGHT TRIAL TEAM and implementing an effective strategy are critical decisions in any litigation, but they are particularly important in a patent lawsuit because of the inherent complexity of the subject matter.

## *team approach*

An effective patent trial team must successfully integrate several elements:

- > a deep bench of experienced trial attorneys
- > technical expertise in the applicable field
- > specialized knowledge of patent law gained through years of practice before the United States Patent and Trademark Office (USPTO).

We combine these three elements to provide you with a comprehensive, fully synchronized approach to your patent case while effectively meeting your needs, providing the highest quality litigation capabilities and the best services at costs that are among the most competitive.

# *early case assessment*

**T**O MAKE SURE WE GET IT RIGHT FOR YOU, we have found it beneficial to conduct a comprehensive case assessment at the outset of a case.

We begin each litigation with our **Early Case Assessment Checklist** that allows us to:

- > understand your objectives and how you define victory
- > scope out the issues with you
- > begin building the case to tell your story effectively
- > develop strategies to control costs
- > determine the value of the case, and better understand your exposure.

**N**EXT, IN ORDER TO DEVELOP THE MOST EFFECTIVE STRATEGY to achieve your goals, it is essential to identify your definition of victory. We understand that litigation is expensive and can lead to significant costs on your business, and so, whether you are a plaintiff or defendant, we try to minimize the disruption to your operation.

## *case strategy*

**Working closely with you**, we meet early on with those employees or former employees who can best provide the details of your story, including information about your technology, business, philosophy and position in the market.

**This process helps us identify the themes**, possible witnesses and documents we will need to tell your story. We also learn how relevant documents are kept, which not only helps us tell your story but is critical to developing an effective e-discovery and general discovery plan. This often results in containing litigation costs.

**Together**, we develop a task-based budget that reflects what we learned during our early case assessment and incorporates the most effective tactics to accomplish your strategic goals. We review this budget with you on at least a monthly basis. We have found that this process is an effective way to keep you informed of our progress and ensure we are focused, responsive and meeting or exceeding your expectations.

**E**ARLY CASE ASSESSMENT also involves appraising the patents and technologies at issue in the litigation. We conduct a thorough Patent Forensics<sup>SM</sup> legal analysis of the patents-in-suit, their file histories, and the prior art, enabling us to develop technical challenges to the patents if we are on the defense or, if on the offense, to protect the value of the patents. Because our attorneys are skilled in both technology and the intricacies of patent law, we dive deeper into the technical issues and do so with leaner staffing and, according to a 2009 client survey, are able to in a highly responsive and efficient manner. Our patent law experience guides the determination of whether requesting patent reexamination would be advantageous and, if so, when best to file the request for reexamination with the USPTO in support of the litigation strategy.

# *technical assessment*

## **A STERNE KESSLER ADVANTAGE**

We meet with damages experts early on to preliminarily evaluate various damages scenarios and provide you with an initial assessment of what the case may be worth to you or, if you are the defendant, your potential exposure. Taken together, these exercises help us develop an early valuation for the case and the technology so we can implement an early settlement strategy, when appropriate, or an aggressive trial strategy, when necessary.

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**E PRIDE OURSELVES** on managing resources in a cost-sensitive manner consistent with case requirements and your business objectives. Once we understand your objectives and how you define victory, we assemble our litigation team, staffing it with experienced trial attorneys, attorneys with experience in the technology at issue, and seasoned patent attorneys, who work as a coordinated team and expertly handle your patent lawsuit from pre-filing investigation through final judgment and appeal.

## *trial teams*

**Our bench is deep. We have the capacity to staff a patent litigation of any size:**

- > your case will be handled by seasoned trial attorneys with experience before juries in federal district courts across the country.
- > having a litigation team with the demonstrated ability to successfully try cases can lead to early settlement on favorable terms and, if necessary, will ensure the best possible representation at trial.

**What sets our trial teams apart** is the ability to combine a thorough understanding of the technical underpinnings of the disputed intellectual property with a sophisticated knowledge of patent law and practical trial skills. The dual skill set the majority of our litigators have allows them to provide critical insights into the substantive patent issues present in your case. Sterne Kessler professionals hold nearly 50 Ph.D.'s and nearly 40 Master's degrees in substantive technical fields like Molecular Biology, Electrical Engineering, Chemistry, Mechanical Engineering and Material Sciences, to name just a few. This broad technical expertise allows us to provide early and ongoing assessment of the patents-in-suit, the relevant prior art and the accused products. As a result, we formulate strong positions on invalidity, infringement and claim construction at the outset of the litigation, further ensuring that our litigation tactics advance the defined set of goals.

# *patent experience*



RECOGNIZED LEADER in practice before the USPTO, our attorneys have sophisticated knowledge of the patent prosecution process, extensive experience with patent interferences, and lead the way on the patent reexamination front.

## Patent reexamination offers:

- > a venue to reassess patentability
- > less expensive
- > more effective than assessing patent validity in district court litigation.

**Reexaminations** can be initiated by the patent owner, the USPTO or by any interested third party, such as an accused infringer. A successful reexamination may lead to the dismissal of a suit in its entirety or, if claims are amended, result in greatly diminished damages exposure. Given the importance of the reexamination, the patent owner will need experienced reexamination counsel to defend its important intellectual property. You can find a description of our patent reexamination services on our website.

**N**O LITIGATION TEAM IS COMPLETE without first-class appellate counsel. Our appellate attorneys have represented numerous parties before the United States Court of Appeals for the Federal Circuit for patent appeals and before the other U.S. Courts of Appeals for non-patent matters. We served as appellate counsel in the landmark Supreme Court case KSR v. Teleflex.

Our appellate attorneys provide critical insights to the trial team to ensure that issues are properly framed and preserved at the district court level should an appeal follow.

*experienced counsel*